B.P.DAS, J & B.N.MAHAPATRA, J.

O.J.C. NO.5494 OF 2001 (Decided on 22.06.2010).

NILAMBAR PATREE …… Petitioner.

.Vrs.

STATE OF ORISSA & ORS. ……. Opp.Parties.

CONSTITUTION OF INDIA, 1950 – ART.226 & 227.

For Petitioner - Shri R.K.Mohanty, Sr.Advocate
D.K.Mohanty, A.P.Bose, S.N.Biswal, S.K.Mohanty,
& P.K.Samantaray.
For Opp.Parties – Shri M.S.Sahoo, Addl. Standing Counsel.

B. P. DAS, J. The petitioner has come up before this court challenging the order dated 25.9.2000 passed by the Tahasildar, Rourkela in Revenue Misc. Case No. 24 of 1975 under Annexure-4, wherein the Tahasildar declined to recognize the petitioner as a tenant in respect of the suit land and to accept rent thereof from him. and praying to quash the impugned order dated 25.9.2000 and to direct the opposite parties to recognize him as a tenant in respect of the suit land in question and to accept rent from him for the suit land in terms of the order dated 23.3.1979 passed by the Tahasildar, Kuanrmunda vide Ans-2..

2. The brief facts leading to the writ application tend to reveal that in 1952, the petitioner, who was a High school teacher and the Palace tutor, applied to the Ex-intermediary of Nagra Estate, Kuanrmunda, in the district of Sundergarh for grant of lease of the suit land measuring Ac. 0.88 decimals in Sabik Plot No. 623, under Khata No. 132 of village Raghunathpalli in the district of Sundergarh. On 15.10.1952, a Hukumnama was granted to the petitioner in respect of the suit land in Reclamation Case No. 243/1952-53 vide Annexure-1. By virtue of the said Hukumnama , the petitioner became a tenant under the Ex-Zamindar of Nagra Estate. On 27.11.1952, a notification was issued under Section-3 of the Orissa Estates Abolition Act, wherein the intermediary interest of Nagra Estate in Mouza Raghunathpalli vested in the State Government.

3. According to the petitioner, by operation of law, the petitioner being a tenant under the Ex-intermediary prior to such date of vesting, he continued as a tenant under the State as per Section 8 (1) of the Orissa Estate Abolition Act. The Estate of the Ex-Intermediary after vesting, he submitted the Register of Hukumnama to the Tahasildar showing the names of the tenants including that of the petitioner. On 4.8.1975, the petitioner submitted an application before the Sub-Collector, Panposh, Rourkela to accept rent from him, because the Revenue Authorities were time and again making attempt to demolish the house standing over the suit land. The S.D.O., Panposh, Rourkela, forwarded the application of the petitioner to the Tahasildar, Kuanrmunda, who registered the same as Revenue Misc. Case No. 24/1975 for fixation of rent in respect of the suit land. On 18.8.1975, the Tahasildar, Kuanrmunda issued notice to the petitioner directing him to produce the relevant documents..The petitioner appeared before the Tahasildar and produced the relevant documents such as Hukumnama

granted to him in Reclamation Case No. 243/1952-53,vide Annexure-1 and the rent receipts granted by the Ex-intermediary. After receiving the documents, the Tahasildar made an inquiry through the Revenue Inspector to know the truth on the claim of the petitioner, and as to whether the petitioner has reclaimed the suit land and is continuing in possession of the same and has paid the rent to the Ex-intermediary. Thereafter on 24.2.1976, after a number of adjournments, the R.I. submitted the report and the Tahasildar directed the Bench Clerk to verify the same. About three years after, on 12.2.1979 the Tahasildar directed the petitioner to file original Hukumnama and rent receipts and the Bench Clerk was also directed to produce the register of Hukumnama. On 23.3.1979, the Tahasildar passed the following orders:-

"Petitioner Sri Patri is present. Seen the Register of Hukumnama available in Tahasil office. Petitioner files the Original Hukumnama and 2 rent receipts in support of payment of rent to Ganju.

It is seen that the petitioner Shri Patri was granted a Hukumnama vide Case No.243 of the year, 1952-53 for reclamation of Anabadi land measuring Ac.0.88 in Plot No.623 (Sabik Plot). The Register of Hukumnama produced by the B.C. is verified. There is entry in the Hukumnama Register maintained in the Tahasil office. The Hukumnama for reclamation was granted by the ex-Zamindar, Nagra Estate. Thus there is no reason to disbelieve the Hukumnama.

It is seen from the case record that the R.I. Raghunath Pali was asked to enquiry into the case and submit a detailed report. His report has been received. It reveals that one Dibakar Mohanty of Panposh was previously cultivating the reclaimed land on behalf of the petitioner. Further, out of the area of Ac. 0.88, an area measuring Ac. 0.26 was under encroachment by Indra Singh and 2 others of Rourkela. Subsequently they have been evicted from the encroachment as seen from the report of the R.I.

As to the present position of the case, the R.I., Raghunathpali, as well as the petitioner state that there has been Dakhal note in favour of Nilambar Patri on the strength of Hukumnama for Ac. 0.57½ of land. The rest Ac.0.31½ has been in favour of Dibakar Mohanty as "Jabar Dakhal". The Kisam of the land at present is "Gharbari".

For want of present settlement records it cannot be said that such notes are left in the Hal settlement records. Neither the R.I. nor the petitioner is able to furnish the Hal Khata and plots etc., which correspond to the sabik plot no. 623 of Raghunathpali village.

However, from the records available before, I am satisfied that the petitioner is in possession of a portion land out of the Sabik Plot No.623. No doubt, the petitioner has perfected his right, title and possession over the same land on the strength of the Hukumnama.

As regards the Jabar Dakhal by Dibakar Mohanty, the petitioner if he so likes, may take shelter in proper court of law for eviction of the encroachment.

As the position of the reclaimed land in question according to the Hal settlement is not clear, the prescribed rent for the reclaimed land cannot be assessed on royati status at this stage. Before passing any such order, Hal settlement records such as draft khatian, order of the settlement officer, etc. are to be verified. After verification of such records, rent will be assessed.

Further the petitioner, Sri Patri is directed to file certified copies of the above settlement records for reference. Case to 21.5.1979."

Sd/-

Tahasildar (P)"

On 5.3.1980, the petitioner filed certified copies of the Hal Settlement Records, but no action was taken on the same long thereafter . on 26.7.1982, the Tahasildar passed the following orders:-

> "Petitioner appeared and prayed for settlement of the land and assessment of rent. It reveals from the order dated 23.5.79 that rent shall be assessed and royati status shall be devolved, after completion of settlement operation and after verification of field with Sabik and Hal ROR. Ask R.K. to indicate the position with regards to current ROR and Amin Shri Sahu to report present position of the field with reference to Hal settlement.
>
> Case to 29.7.1982.
>
> Sd/
> Tahasilsdar"

On 29.09.1999 the following order was passed by the Tahasildar:

> " The case is put up today. Ask Sri Negi, Amin to visit field and submit his field enquiry report by 7.10.99. At the same time issue notice to the applicant, Shri Nilambar Patri to be present in my court with all relevant papers/documents, if any for hearing. Put up the C/R on 8.10.99."
>
> Sd/-
> Addl. Tahasildar

4. Ultimately the Tahasildar passed the impugned order dated 25.9.2000 vide Annexure 4 rejecting he prayer of the petitioner for assessment of rent and holding that the petitioner is not a tenant under the Hukumnama and the said Hukumnama is not legal and .valid and does not convey any right ,title and interest to the petitioner .

5. The contention of learned counsel for the petitioner is that the Tahasildar has no jurisdiction to annul the order passed on 23.3.1979, and the impugned order amounts to review of his own order, which is not permissible under law and the order dated 25.9.2000 was passed without any adjudication and backed by no reason and hence, the same cannot withstand the judicial scrutiny.

6. Perused the counter affidavit filed by the Addl. Tahasildar, Rourkela, wherein it is indicated that the contention of the petitioner to the extent that the case has reached its finality is not correct. The matter is still open and no illegality has been committed by the Tahasildar in making further inquiry of the same and passing the impugned order. The further grounds taken in the counter affidavit is that though by order dated 23.3.1979 the petitioner was directed to produce the Hal settlement records including certified copies of the draft Khatian and orders of the Settlement Officer, the same had never done before passing the final order. The Tahasildar has framed seven issues and the outcome of the same is the order impugned. The further stand of the State is that the Tahasildar has rightly observed that Hukumnama is not in printed form, the rent receipts granted by the Gountia although bears the thumb impression, but the name has not been mentioned.

7. Before going into the merit of the case , we make it clear that the genuineness of the Hukumnama, the Hukumnama Register and the rent receipts granted by the Gountia has never been doubted at any point of time. With the aforesaid background, Mr.Mohanty ,learned counsel for the petitioner, draws our attention to a Full Bench decision of this Court reported in 73(1992)C.L.T. 868 (Smt. Basanti Kumari Sahu vr. State of Orissa and others).in paragraph 14 of which it was held thus :-

"Though the petitioner may have misconceived the position in law and made application under section 8(1), the officer i.e., the Tahasildar, should have considered the same on the administrative side with a view to satisfying himself if the petitioner was a tenant under the State prior to vesting having regard to the provisions contained in section 8(1) and the State was obliged to accept rent from her. The misconceived application did not absolve the Tahasildar from proceeding in the right manner. Hence, the application filed by the petitioner should be treated as such and not as one under section 8(1) for settlement of land. Hence, while upholding the decision of the Board of Revenue annulling the order dated 17.12.1977 as per Annexure 6, I would vacate the findings recorded by it so that the Tahasildar would bring an independent mind to bear on the matter and act independently."

8. So the law is well settled that if no application is filed under section 8 (1) of the Orissa Estate Abolition Act by a tenant or if a misconceived application is filed, it is the Tahasildar to consider the same on the administrative side with a view to satisfying himself if the applicant was a tenant under the State prior to vesting having regard to the provisions contained in section 8 (1) and the State is obliged to accept rent from him.

So with the above legal position, let us find out whether the Tahasildar was satisfied that the petitioner was a tenant under the State. The order dated 23.3.1979 is nothing but a clear and cogent satisfaction of the Tahasildar as regards his finding that the petitioner was a tenantunder the State prior to vesting and his name also found place in the Hukumnama and he was in uninterrupted possession of the land. The nextt ground, which was raised in the counter affidavit that the petitioner could not produce the ROR for verification of the Tahasildar in terms of the order dated 23.3.1979 is also not tenable because on perusing the L.C.R. produced by the learned counsel for the State, we find that in the marginal note of the order sheet dated 26.7.1982, the following endorsement has been made:-

"Verified the ROR (Hal) and report submitted separately"

But at the time of perusal of the order sheet, we came across a document which was prepared by the Tahasildar, Panposh on 16.10.1984 under the heading "my observation in the case", The observation is reproduced herein below:-

"On perusal of the documents filed by the parties, the report dated 12.2.76 of the R.I. and statements of the parties and the witnesses, besides the observation by my predecessor vide order sheet dated 23.3.79, I agree that the Hukumnama has been duly granted by the Ex-Zamindar, Kuanrmunda.

Perusal of the compromise petition dated 14.10.78 filed before the Inspector-in-Charge, Raghunathpali P.S. by Sri Guru Charan Sahoo and Nilamber Patri and witnessed by Dibakar Mohanty and others, clearly shows that, the disputed plot was under the possession of the petitioner, Nilamber Patri. The report of the R.I. dated 12.2.76 is specific that the petitioner was all along in possession of the disputed land.

I have also examined the oral evidence tendered by both the parties. As it appears that the petitioner is consistent in his statement regarding title, ownership and possession over the disputed land. The objector although claims possession over the disputed land since 1945, has not been able to produce any documents so far in support of his possession, whereas the petitioner has filed Hukumnama and rent receipts and as such there is no reason to disbelieve the case of the petitioner.

As regards the objector Wariam Singh, it will suffice to say that he has got no case. He has neither examined himself nor any witnesses produced by him in support of his case so far. He has also not taken any care to prove the document filed by him.

Hence I am of the opinion that, I should have disposed of the case in the light of my observation above, but I feel that in order to do justice to the case, I should visit the spot and conduct local inquiry before I deliver my final order in this case.

Put up for my local enquiry on 14.11.84 and inform the parties accordingly.

Dictated,
Sd/-16.10.84
Tahasildar, Panposh"

9. This being an inquiry on administrative side also confirms the claim of the petitioner that he was in uninterrupted possession of the land and the Hukumnama had been duly granted by the Ex-Zamindar, Kuarmunda and that too the then Tahasildar was fair enough to say that "I should visit the spot and conduct local inquiry before I deliver my final order in this case".

10. In the aforesaid premises, the question which arises for consideration is as to whether the impugned order is sustainable . As indicated above, the finding recorded in the order dated 23.3.1979 relating to the right ,title land interest of the petitioner over the suit land is on the strength of Hukumnama duly granted by the Ex-Zamidar ,Kuarmunda as well as the physical possession and the same has also reached its finality. The matter was only kept pending for assessment of the rent on filing of the certified copies of the Hal settlement records, which were also filed. Thus there was no occasion on the part of the Tahasildar to pass the impugned order negativing the findings conclusively arrived at by the previous Tahasildar after taking into consideration the oral evidence. That apart, the impugned order has been passed without assigning any reason and without giving opportunity of hearing to the petitioner.

11. We can go to the extent of saying that the impugned order is nothing but to review the order which was passed by the previous Tahasildar, which is not permissible and there is no power with the Tahasildar to review the order. Resultantly, the impugned order dated 25.9.2000 under annexure-4 is set aside and the Tahasildar, Uditnagar, Rourkela-O.P.2 is directed to asses the rent after verifying the ROR of the corresponding Hal Plot with that of Sabik Plot and accept the rent.

The entire exercise shall be completed within a period of three months from today.

12. The writ application is accordingly allowed, but without any order as to costs.

Writ application allowed.